WP(C) 5210/2006

BEFORE

THE HON'BLE MR. JUSTICE B.K.SHARMA

By means of this writ petition, the petitioner, who was an aspirant for admissio n into M.B.B.S/B.D.S course for the session 2006 has assailed the legality and v alidity of the order passed by the Director of Medical Education, Assam cancelin g the seat, which was earlier allotted to the petitioner. The impugned order has been passed by the Director of Medical Education, Assam (D.M.E.) on 28.9.2006. As per the additional affidavit filed by the petitioner, he was informed of the decision only on 4.10.2006 by the D.M.E's office by handing over the copy of t he impugned order dated 28.9.2006 to the petitioner when he had visited him in t he office. Being aggrieved by the impugned order, the petitioner immediately ap proached this Court by filing the writ petition on 9.10.2006. The matter was fi rst listed on 10.10.2006 and was adjourned to 1.11.2006 enabling the learned Sta te counsel to obtain instructions. Upon failure to obtain instructions, the mat ter was again adjourned on 1.11.2006 to 8.11.2006. On 8.11.2006, the learned Sta te counsel was requested to produce the records as indicated in the impugned ord er dated 28.9.2006.

2. On 20.11.2006 also, the matter was adjourned to 27.11.2006 on the reques t of the learned State counsel as well as counsel representing the DME Assam. On 27.11.2006 also, the matter could not be taken up as it had to be adjourned on the request of the learned counsel for the respondents.

3. On 8.12.2006, on the request of the learned counsel for the DME Assam, t he matter was again adjourned to 13.12.2006. On 13.12.2006, a prayer was made b y the learned counsel for the petitioner to file an affidavit-in-reply to the a ffidavit-in-opposition filed by the DME Assam i.e. the Respondent No.2. On 19.3 .2007, the matter was ordered to be listed for admission-hearing on 20.3.2007. During the course of hearing on 20.3.2007, the learned counsel for the Responden t No.2, upon failure to produce all the relevant records, prayed for time and th e same was reluctantly granted up-to 22.3.2007. This is how the matter was take n up for final adjudication today.

4. The petitioner claims to be a permanent resident of Golaghat town in the district of Golaghat and as per the statements made in the writ petition, he wa s born on 16.3.1986 at Golaghat town. In support of such claim, the petitioner has annexed copies of the birth certificate as well as Permanent Resident Certif icate (P.R.C.) as Annexure-1 and Annexure-6 respectively to the writ petition. H e has also annexed the copy of the Caste Certificate as Annexure-4 to the writ p etition. Thus, it is the case of the petitioner that he is a permanent resident of Assam and belongs to Other Backward Classes (O.B.C.) category. In support of such claim, the petitioner submitted the relevant documents before the selectio n board which conducted the selection for admission into the MBBS Course.

5. On the basis of the materials available on record and the performance of the petitioner, he was selected for admission to MBBS/BDS Course for the sessio n 2006. It is submitted at the bar that the admission to the course is over and the last admission was on 30.9.2006. However, in view of the impugned order ca nceling the allotment of the seat to the petitioner, naturally the petitioner co uld not get himself admitted to the course.

6. For a ready reference, the impugned Annexure-9 order dated 28.9.2006 is quoted below :-

No.DME/Adm./3/2006/9807 Date 28.9.06.

ORDER

As per decision of the Selection board held on 4th July, 2006 to 7th July'06 for selection of candidates for admission into the 1st year MBBS/BD S course for the session 2006, the following candidates under un-reserved/OBC & TGL EX.TGL category was kept withheld on the ground of doubt-full Permanent Res

ident Certificate and Caste Certificate issued to them.

Selection Board after having scrutinized the Permanent Resident Certific ate/Caste Certificate submitted by the following candidates at the time of Coun seling decided for verification of the Permanent Resident Certificate/Caste Cert ificate issued to them by authority.

Sl.No.	Roll No.ofCEE	Name of candidates	Rankof CEE	Category
1.	625901	Aditi Vidha	130	Un-reserved
2.	630013	GulbaharKhatun	10	- do -
3.	623341	Vijay Kumar	23	- do -
4.	640021	Abhishek Kumar	349	OBC-
5.	620240	Kiran Kumari	2366	TGL/Ex. TGL

Govt. in Health Department caused necessary verification through the respective Deputy Commissioner/SDO(Civil) and ascertained that the above candidates do not have valid Permanent Resident Certificate/Caste Certificate as intimated vide t heir letter No.HL.B.277/06/198 dated 11.09.06, No.HL.B.277.2006/233 dated 21.09. 06 and No.HL.B.277/06/237 dated 23.09.06 to this Directorate and directed to ta ke necessary steps accordingly.

Based on the above, the above allotment of seat for admission into MBBS/BDS cour se, session 2006 to the above mentioned candidates is hereby cancelled from the select list for admission into the 1st year MBBS/BDS course.

Sd/-
Prof. U.C. Sarma,
Director of Medical Education, Assam,
Dispur, Guwahati-781006

7. From the impugned order, it is seen that the selection board which hel d its meeting between 4th to 7th July, 2006 for selection of candidates for admi ssion into 1st year MBBS/BDS course for the session 2006, decided to withhold th e selection of candidates named in the order on ground of doubtful PRC and Cast e Certificate issued to them. The petitioner has been included in the impugned o rder. As per the impugned order, the Government in the Health department caused necessary verification through the respective Deputy Commissioner/SDO(Civil) an d ascertained that the candidates names in the impugned order do not have valid PRC/Caste Certificate as indicated by letters dated 11.9.2006, 21.9.2006 and 23 .9.2006.

8. Two separate affidavits-in-opposition have been filed, one by the Resp ondents No.1 and 2 and the other by the Respondent No.3 i.e. the Deputy Commissi oner. In the affidavit filed by the Respondents No.1 and 2, it has been contende d that as there was sufficient reasons to believe that the petitioner’s caste ce rtificate and the PRC were of doubtful nature, the matter was referred to the Go vernment for verification, which in turn, referred the matter to the jurisdictio nal Deputy Commissioner. Referring to the report furnished by the Deputy Commis sioner on 11.9.2006 to the Secretary to the Government of Assam, Health and Fami ly welfare (B) Department, the said respondents have contended that on the basis of the report furnished by the Deputy Commissioner, the impugned order had to be passed canceling the allotment of seat in favour of the petitioner.

9. In the affidavit in opposition filed by the Respondent No.3 i.e. the Dep uty Commissioner, it has been contended that the petitioner was born and brought up in Uttar Pradesh and he studied there throughout his academic career. This s tatement in the affidavit is nothing but falsification of truth, inasmuch as in the report dated 11.9.2006, it has been stated that the petitioner read up to 7 th standard at Golaghat. Certain statements have also been recorded regarding t he landed property of the father of the petitioner as well as his grand-father. In Para-8 of the affidavit, it has been stated that the process is being initi ated to cancel the Caste Certificate and the PRC issued in favour of the petitio ner. However, it is an admitted position that till date, the PRC as well as the

Caste Certificate issued in favour of the petitioner have not been cancelled.

10. The petitioner has filed two separate affidavits-in-reply in respect of the affidavits-in-opposition filed by the Respondents No.1 and 2 and the Respondent No.3. In the reply affidavits, the petitioner has denied the contentions raised by the respondents and it is his stand that he is a permanent resident of Assam and belongs to OBC category. The petiioner has denied the stand of the Deputy Commissioner that he was born and brought up in Uttar Pradesh. He has contended that the PRC as well as the Caste Certificate were issued upon verification of the materials by the competent authority.

11. I have heard Dr. G. Lal, learned counsel for the petitioner as well as Ms R. Chakraborty, learned State counsel representing the Respondent No.3. I have also heard Mr. D. Saikia, learned counsel representing the Respondent No.1.

12. While Dr. Lal, learned counsel for the petitioner submits that the petitioner has been illegally deprived of admission into the MBBS course, Mr. D. Saikia, learned counsel representing the Respondents No.1 and 2 submits that there is nothing wrong in the impugned order. He submits that as the PRC and Caste Certificate produced by the petitioner are doubtful, the authorities had no other alternative than to cancel the seat allotted to the petitioner. He submits that the decision of the authority is primarily on the basis of the report furnished by the Deputy Commissioner.

13. Ms R. Chakraborty, learned State counsel has submitted in reference to the counter affidavit filed by the Deputy Commissioner that when it was found that the Caste Certificate and PRC are doubtful, the report dated 11.9.2006 was submitted to the Government of Assam in the Health and Family Welfare (B) Department.

14. While Dr. Lal, learned counsel for the petitioner has referred to the Division Bench judgment of this Court as reported in (1989) 1 GLR 117 (Ramapada Dhar v. State of Assam & Ors), Mr. Saikia, learned counsel for the Respondents No.1 and 2 has referred to the decision of the Apex Court in Medical Council of India v. Madhu Singh reported in (2002) 7 SCC 258. He has also referred to the decision of the learned Single Judge in W.P. (C) No.5205/2006 (Vijoy Kumar v. State of Assam & Ors.). Mr. Saikia, learned counsel for the Respondents No.1 and 2 has also produced the relevant records and I have gone through the same.

15. The impugned order dated 28.9.2006 has been passed primarily on the basis of the letters mentioned therein which are the letters dated 11.9.2006, 21.9.2006 and 23.9.2006. A copy of the letter dated 11.9.2006 has been annexed to the counter affidavit filed by the Respondents No.1 and 2, which is the purported report of the Deputy Commissioner submitted to the Government of Assam in the Health and Family Welfare Department. The letters dated 21.9.2006 and 23.9.2006, although have not been annexed to the counter affidavit, are available on record. By the letter dated 21.9.2006, the Government of Assam in the Health and Family Welfare (B) Department directed the DME Assam to cancel the seats allotted in favour of 3 candidates named in the letter, one of whom is the petitioner. However, in the letter, no reason has been assigned as to why the allotment of seat in favour of the petitioner should be cancelled. The letter dated 23.9.2006 is in respect of one Shri Vijay Kumar and does not have anything to do with the petitioner. Thus, the primary basis of cancellation of seat allotted in favour of the petitioner is the purported report of the Deputy Commissioner dated 11.9.2006 annexed to the counter affidavit filed by the Respondents No.1 and 2.

16. I have perused the purported report dated 11.9.2006, according to which, on the basis of the materials on record, it is difficult to ascertain the caste status of the petitioner in Assam. Thus, there is no conclusion as such that the petitioner does not belong to OBC category and yet the Deputy Commissioner

, in his report stated that the Caste Certificate produced by the petitioner is not genuine. Perhaps, this is the precise reason as to why the Caste Certificat e still stands and has not been cancelled by the competent authority.

17. As regards the PRC, the report has revealed that the grandfather of the petitioner is a resident of Golaghat town and his name was included in the Ele ctoral Roll of 1975 of Golaghat LAC. Likewise, the name of the father of the pe titioner was also included in the Electoral Roll of 1997 in Golaghat LAC. The report has further revealed that the grandfather of the petitioner had his lan ded property covered by Dag No.5611 and Periodic Patta No.88 measuring 18 lessa s which he had sold to one Baleswar Prasad in 1979 by executing a registered sal e deed.

18. The report has further revealed that the grandfather of the petitioner h ad purchased a plot of land measuring 1Katha only covered by Dag No.5581 and PP No.491 (New) of Golaghat town from one Shri Narendra Goswami in 1996 vide regist ered sale deed No.1987/1532 dated 16.12.1996which is yet to be mutated in his na me. As per the report, the father of the petitioner has been residing in a rent ed house owned by one Shri Baleswar Prasad of Golaghat town in Ward No.5. As p er the enquiry, the father of the petitioner has been staying there for last 8/ 9 years and prior to that also, he was staying in other rented house of Golagh at town. As per the report, the petitioner read up to Class VII standard at Gol aghat and thereafter, prosecuted further studies in Uttar Pradesh up-to Higher Secondary level. Presently, he has been residing with his father at Golaghat. Strangely enough, in the report, the Deputy Commissioner has observed that the father of the petitioner can be said to be the ordinary resident of Golaghat tow n for last 8/9 years, although as per his report, the father of the petitioner prior to staying at the present house for last 8/9 years, was staying at Golagha t town in other rented house.

19. The above purported report furnished by the Deputy Commissioner, Golagha t is the foundation of the impugned order issued cancelling the seat allotted in favour of the petitioner. There is no dispute that the before cancellation of t he seat allotted in favour of the petitioner, he was not put to any kind of noti ce. Thus, there was gross violation of principles of natural justice. The peti tioner was an aspirant for MBBS course and in fact, he was also selected for th e same on the basis of the materials produced by him which include the PRC and the Caste Certificate. However, the selection board expressing doubt about the same made a reference to the Government, and in turn, the Government made a re ference to the Deputy Commissioner, who in turn submitted the purported report d ated 11.9.2006. On a bare perusal of the report, it cannot be said that the Dep uty Commissioner in his report has conclusively established that the petitioner is not a permanent resident of Golaghat and that he does not belong to OBC categ ory. The selection board expressed doubt on the PRC and the caste certificate of the petitioner, but such doubt cannot form the foundation of the decision adv ersely affecting the valuable right of a citizen.

20. The Division Bench of this Court in Ramapada Das (supra) under somewhat similar situation found that the selection board exceeded its jurisdiction in do ubting the PRC submitted along with the application for admission to MBBS Course . The candidate in that case submitted the PRC, but the selection board did not consider his case on the ground that the PRC was not genuine. It has been held in the circumstances by the Division Bench, that the selection board acted beyo nd its jurisdiction. It has been observed in the said decision that when the par ticular certificate was issued by the competent authority, it was none of the bu siness of the selection board to doubt the veracity of the same and to act upon such doubt towards rejection of candidature of the candidate.

21. In the judgment, some of the parameters for grant of PRC has been referr ed, one of which is that the person who has continuously residing in Assam for m

inimum 20 years is entitled to PRC. The child born out of such person is also c onsidered to be a permanent resident of the place. As per the report furnished b y the Deputy Commissioner, the grandfather of the petitioner was a voter and hi s name appeared in the voters' list of 1975. No conclusion has been reached by the Deputy Commissioner that the father of the petitioner has not resided in the State for the last 20 years. On the other and, the PRC was issued from his off ice only. Be that as it may, it is not a case for this Court to verify the genu ineness or otherwise of the PRC issued in favour of the petitioner by the comp etent authority. As noted above, the PRC and the Caste Certificate issued in fa vour of the petitioner have not been cancelled till date.

22. In the record contained in the file bearing No.HLB.277/2006, the office note pertaining to the petitioner, does not reflect anything as to the genuinene ss or otherwise of the PRC. Rather, it mentions that the name of the grandfath er of the petitioner appeared in the Electoral Roll of 1975. It is on the basis of the such note, the matter was put up before the competent authority with a f urther note that the petitioner is not a permanent resident of Golaghat and that his Caste Certificate is doubtful. Accordingly, a suggestion was made to cance l the seat allotted in favour of the petitioner. This is how the matter was pro cessed. Eventually, the seat which was allotted in favour of the petitioner wa s cancelled.

23. As noted above, the report furnished by the Deputy Commissioner on 11.9. 2006 does not conclusively establish that the petitioner is not a permanent resi dent of Golaghat and that he does not belong to OBC category. The records have revealed that the Municipal Board of Golaghat submitted the report to the Deput y Commissioner, Golaghat on 6.9.2006 certifying that the petiioner was studying at Golaghat up-to 7th standard. Likewise, the Superintendent of Police also sub mitted report to the Deputy Commissioner by his communication dated 24.8.2006 th at the PRC obtained by the petitioner is found to be correct. Ignoring these rep orts and without making any reference to the same, the Deputy Commissioner, on t he basis of the surmises and conjecture as reflected in his report finally opin ed that the Caste Certificate and the PRC cannot be considered to be genuine. T his has led to a strange situation inasmuch as it is the Addl. Deputy Commission er, a subordinate officer of the Deputy Commissioner, who has issued the PRC and till this very date, the PRC stands.

24. As regards the issuance of the OBC certificate, the same has been issue d by the Vice Chairman of the Sub-Divisional Other Backward Classes Development Board, Golaghat and has been countersigned by the Deputy Commissioner, Golaghat. It is not understood as to on what basis the Deputy Commissioner could make co mments on a certificate issued by the OBC Development Board. Be it stated here that although both the certificates still hold the field and have not been cance lled till this very date. Thus, it will have to be understood that the petition er is a permanent resident of Assam and he belongs to OBC category.

25. In view of the above reflection made from the record, I have no hesitati on to hold that the impugned decision, as reflected in the order dated 28.9.2006 suffers from inherent infirmity and is not sustainable in law. Accordingly, th e same is set aside and quashed.

26. This now leads us to vital question as to whether any direction can be i ssued for admission of the petiioner to the MBBS Course. It will be for the res pondents to decide as to what consequence will follow upon setting aside and qu ashing of the impugned order dated 28.9.2006. It is also for the respondents to decide as to how the petitioner has to be treated for the kind of situation cr eated by them by issuing the impugned order dated 28.9.2006 and that too, withou t affording any opportunity of being heard to the petitioner.

27. The decision on which Mr. Saikia, learned counsel for the Respondents No

.1 and 2 has placed reliance i.e. MCI v. Madhu Singh (supra) is not in respect of kind of situation with which the present proceeding is involved. The decisi on was rendered in view of the claim that since seats were available and there was delay in counseling there should be further admission into the MBBS course a lthough the classes had already started. It is in that context, the Apex Court held that there cannot be any scope for admission and that would be against the very spirit to get admission to the MBBS course and that even if the seats are n ot filled up, there cannot be a ground of making mid-stream admission.

28. In Vijay Kumar's case, noticing that admissions were already over and in view of the aforesaid decision of the Apex Court, no mandamus can be issued for mid-stream admission, this Court declined to enter into the merits of the case. However, liberty was granted to the petitioner to pursue his remedy elsewhere f or compensation. In the instant case, the parties have exchanged their affidav its and the learned counsel for the parties have extensively argued on the legal ity and validity of the impugned order dated 28.9.2006. Situated thus, this Cou rt is bound to adjudicate as to the validity or otherwise the impugned order da ted 28.9.2006. This has been done and the impugned order has been set aside. A s to what consequences will follow upon setting aside and quashing of the impug ned order dated 28.9.2006, it is for the respondents to decide.

29. Mr. Saikia, learned counsel for the Respondents No.1 and 2 has argued th at at best the petitioner can be entitled to compensation as no admission to t he MBBS course could be made at this stage. If that be so, the petitioner will be entitled to compensation. At this stage, Mr. Saikia, learned counsel for the Respondents No.1 and 2 submits that the petitioner may pursue his remedy else where for awarding compensation. While it will be admissible for the petitioner to pursue private law remedy, I am of the considered opinion that if the petitio ner cannot be admitted or any wrong has been done to him by depriving him of medical admission for the session 2006, which has resulted in loss of one precio us academic year with the future uncertainty of medical admission, he cannot be said to be remediless under Article 226 of the Constitution of India.

30. The respondents after depriving the petitioner of his right to get himse lf admitted to the course in question, in an arbitrary manner cannot take the pl ea that the petitioner will have to pursue his remedy elsewhere. The petitioner cannot be made remediless and the writ Court cannot become silent spectator to t he wrong done. The petitioner at the very threshold of his life and academic c areer has been forced to go to litigation. Now, the learned counsel for the resp ondents submits that the petitioner should initiate another proceeding.

31. Article 226 of the Constitution is a form of judicial review to keep the authorities within the bounds of law. The Court is concerned with the decisi on making process. Judicial review is meant for upholding the rule of law and th e Constitution. The Indian Constitution enshrined the rule of law guaranteed co nstitutional rights to the subjects. It also guaranteed remedy for enforcemen t of its right. Article 226 is aimed to sure that the State and its instrument alities are kept within the limits of the power and judicial review is meant t o render justice to the individual concerned.

32. A decision that is absurd or perverse is unreasonable and therefore arb itrary. A judgment arrived at by the lawful authority that is oppressive to the subject is violative of Article 14 of the Constitution of India. A decision ma y also be arbitrary and discriminatory where it is unduly oppressive and unjust ifiably inflict excessive hardship to a citizen by invading his right or interes t. No doubt the administrative authority is authorized to have a free play with in the joints - a margin of appreciation is to be allowed to the maker of the d ecision. But the Court is equally charged with the duty to see as to whether t he authority acted within the limits set down by law. In R.V. Tower Hamlets Lon don Borough Council, ex. P. chentix Developments Ltd. reported in (1998) 1 All

ER 961 the Court summarized the principles in the following passages.

&The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or concersely, have refused to take into account or neglected to take into account matter which they ought to take into account. Once that question is answered in favour of the local authority it may still be possible to say that although the local authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case again I think the court can interfere. The power of the Court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the power which Parliament has confined in them &

33. Part III of the Constitution embodies a guarantee against the State action. Article 14 assures all persons equally before law or equal protection of law within the territory of India. The Supreme Court of India expanded the scope and sweep of Article 14 which enlived it to a dynamic concept of equality. The content and reach of Article 14 is not confined to the doctrine of classification but it has now been widened and expanded to ensure fairness and equality of treatment. Where an action is arbitrary, it amounts to denial of equality. Article 14 strikes at arbitrariness of a State action in any form. Where a decision infringes the right to equality the same should receive most anxious consideration from the Court. A decision to be just and fair must maintain proper balance between the adverse facts which its decision may have on rights, liberties or interest of the persons and the process in which it peruses.

34. In the instant case, the decision of the authorities is unreasonably harsh, onerous and oppressive which has infringed the valuable rights, liberties and interest of the petitioner guaranteed by Part III of the Constitution of India. I am constrained to interfere with the impugned decision on the ground of arbitrariness by the application of the acceptable framework of judicial review to set right the decision making process.

35. In view of the above, the writ petition is allowed by setting aside and quashing the impugned order dated 28.9.2006. If for any reason, the petitioner does not get the consequential benefit of admission to the 1st year MBBS/BDS Course 2006, he will be entitled to compensation which is quantified at Rs.6,00,000/- (Rupees six lacs) to be born by the respondents in equal share. This remedy under public law remedy is independent of the right of the petitioner to pursue private law remedy.

36. Mr. Saikia, learned counsel for the Respondents No.1 and 2 submits that the DME Assam may not be held liable since he has acted as per direction of the Secretary to the Government of Assam in the Health Department (Respondent No.1). Such argument does hold any water. It is the collective responsibility of all the respondents and they will have to bear the burden in equal proportions.

37. Necessary follow up action in terms of this judgment and order shall be followed and completed by the respondents on or before 30th of April, 2007.

38. Writ petition is allowed with cost against the respondents which is quantified at Rs.6,000/- (Rupees six thousand) only.